

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 631

FINAL READING

Introduced by Business and Labor Committee: Lathrop, 12,
Chairperson; McGill, 26; Schilz, 47; Wallman,
30; White, 8.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Employment Security Law; to amend
2 sections 48-622.01, 48-622.02, 48-622.03, 48-655, 48-665,
3 48-668, and 48-668.02, Reissue Revised Statutes of
4 Nebraska, and sections 48-612.01, 48-648, 48-648.01,
5 48-649, 48-652, and 48-654, Revised Statutes Cumulative
6 Supplement, 2008; to change provisions relating to
7 information disclosure, electronic payment and filing,
8 combined tax rate, employer accounts, unemployment
9 compensation, and worker training programs; to harmonize
10 provisions; to eliminate an advisory council; to repeal
11 the original sections; to outright repeal section 48-610,
12 Reissue Revised Statutes of Nebraska; and to declare an

LB 631

LB 631

1 emergency.

2 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-612.01, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 48-612.01 (1) Information obtained pursuant to subsection
4 (1) of section 48-612 may be disclosed under the following
5 circumstances:

6 (a) ~~To the extent necessary for the proper presentation~~
7 ~~of the contest of an unemployment benefit claim or tax appeal.~~
8 Any claimant or employer or representative of a claimant or
9 employer, as a party before an appeal tribunal or court regarding
10 an unemployment claim or tax appeal, shall be supplied with
11 information obtained in the administration of the Employment
12 Security Law, to the extent necessary for the proper presentation
13 of ~~his, her, or its~~ the claim or appeal;

14 (b) ~~The Nebraska Workers' Compensation Court may use the~~
15 ~~names, addresses, and identification numbers of employers~~ may be
16 disclosed to the Nebraska Workers' Compensation Court which may
17 use such information for purposes of enforcement of the Nebraska
18 Workers' Compensation Act;

19 (c) ~~Appeals records and~~ Appeal tribunal decisions
20 rendered ~~under~~ pursuant to the Employment Security Law and
21 designated as precedential ~~determinations~~ decisions by the
22 commissioner on the coverage of employers, employment, wages, and
23 benefit eligibility, may be published in printed or electronic
24 format if all social security numbers have been removed and such
25 disclosure is otherwise consistent with federal and state law;

1 (d) To a public official for use in the performance of
2 his or her official duties. For purposes of this subdivision,
3 performance of official duties means the administration
4 or enforcement of law or the execution of the official
5 responsibilities of a federal, state, or local elected official.
6 Administration of law includes research related to the law
7 administered by the public official. Execution of official
8 responsibilities does not include solicitation of contributions or
9 expenditures to or on behalf of a candidate for public office or
10 to a political party;

11 (e) To an agent or contractor of a public official
12 to whom disclosure is permissible under subdivision (d) of this
13 subsection;

14 (f) ~~Information~~ For use in reports and publications
15 containing information collected exclusively for statistical
16 purposes under a cooperative agreement with the federal Bureau of
17 Labor Statistics. This subdivision does not restrict or impose any
18 condition on the transfer of any other information to the federal
19 Bureau of Labor Statistics under an agreement or the federal Bureau
20 of Labor Statistics' disclosure or use of such information; and

21 (g) In response to a court order.

22 (2) Information about an individual or employer obtained
23 pursuant to subsection (1) of section 48-612 may be disclosed to:

24 (a) One who acts as an agent for the individual or
25 employer when the agent presents a written release from the

1 individual or employer, where practicable, or other evidence of
2 authority to act on behalf of the individual or employer;

3 (b) An elected official who is performing constituent
4 services if the official presents reasonable evidence that the
5 individual or employer has authorized such disclosure;

6 (c) An attorney who presents written evidence that he or
7 she is representing the individual or employer in a matter arising
8 under the Employment Security Law; or

9 (d) A third party or its agent carrying out the
10 administration or evaluation of a public program, if that third
11 party or agent obtains a written release from the individual or
12 employer to whom the information pertains. To constitute informed
13 consent, the release shall be signed and shall include a statement:

14 (i) Specifically identifying the information that is to
15 be disclosed;

16 (ii) That state government files will be accessed to
17 obtain that information;

18 (iii) Identifying the specific purpose or purposes for
19 which the information is sought and that information obtained under
20 the release will only be used for that purpose or purposes; and

21 (iv) Identifying and describing all the parties who may
22 receive the information disclosed.

23 (3) Information obtained pursuant to subsection (1) of
24 section 48-612 may be disclosed under the following circumstances:

25 (a) ~~Information about an individual or employer shall~~

1 ~~only be disclosed to the respective individual or employer.~~ To an
2 individual or employer if the information requested pertains only
3 to the individual or employer making the request;

4 (b) To a local, state, or federal governmental official,
5 other than a clerk of court, attorney, or notary public acting on
6 behalf of a litigant, with authority to obtain such information by
7 subpoena under state or federal law; and

8 (c) ~~Disclosures to~~ To a federal official for purposes of
9 unemployment compensation program oversight and audits, including
10 disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97
11 as they existed on January 1, 2007.

12 (4) If the purpose for which information is provided
13 under subsection (1), (2), or (3) of this section is not
14 related to the administration of the Employment Security Law
15 or the unemployment insurance compensation program of another
16 jurisdiction, the commissioner shall recover the costs of providing
17 such information from the requesting individual or entity prior to
18 providing the information to such individual or entity unless the
19 costs are nominal or the entity is a governmental agency which the
20 commissioner has determined provides reciprocal services.

21 (5) Any person who receives information under subsection
22 (1) or (2) of this section and rediscloses such information for any
23 purpose other than the purpose for which it was originally obtained
24 shall be guilty of a Class III misdemeanor.

25 Sec. 2. Section 48-622.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 48-622.01 (1) There is hereby created in the state
3 treasury a special fund to be known as the State Unemployment
4 Insurance Trust Fund. All state unemployment insurance tax
5 collected under sections 48-648 to 48-661, less refunds, shall be
6 paid into the fund. Such money shall be held in trust for the sole
7 and exclusive use of payment of unemployment insurance benefits.
8 Any money in the fund available for investment shall be invested
9 by the state investment officer pursuant to the Nebraska Capital
10 Expansion Act and the Nebraska State Funds Investment Act, except
11 that interest earned on money in the fund shall be credited to
12 the Nebraska Training and Support Trust Fund at the end of each
13 calendar quarter.

14 (2) The commissioner shall have authority to determine
15 when and in what amounts withdrawals from the State Unemployment
16 Insurance Trust Fund for payment of benefits are necessary. Amounts
17 withdrawn for payment of benefits shall be immediately forwarded
18 to the Secretary of the Treasury of the United States of America
19 to the credit of the state's account in the Unemployment Trust
20 Fund, provisions of law in this state relating to the deposit,
21 administration, release, or disbursement of money in the possession
22 or custody of this state to the contrary notwithstanding.

23 (3) If and when the state unemployment insurance tax
24 ceases to exist as determined by the Governor, ~~in consultation~~
25 ~~with the state advisory council,~~ all money then in the State

1 Unemployment Insurance Trust Fund less accrued interest shall be
2 immediately transferred to the credit of the state's account in
3 the Unemployment Trust Fund, provisions of law in this state
4 relating to the deposit, administration, release, or disbursement
5 of money in the possession or custody of this state to the
6 contrary notwithstanding. The determination to eliminate the state
7 unemployment insurance tax shall be based on the solvency of
8 the state's account in the Unemployment Trust Fund and the need
9 for training of Nebraska workers. Accrued interest in the State
10 Unemployment Insurance Trust Fund shall be credited to the Nebraska
11 Training and Support Trust Fund.

12 Sec. 3. Section 48-622.02, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 48-622.02 (1) There is hereby created in the state
15 treasury a special fund to be known as the Nebraska Training
16 and Support Trust Fund. Any money in the fund available for
17 investment shall be invested by the state investment officer
18 pursuant to the Nebraska Capital Expansion Act and the Nebraska
19 State Funds Investment Act. All money deposited or paid into
20 the fund is hereby appropriated and made available to the
21 commissioner. No expenditures shall be made from the fund without
22 the written authorization of the Governor upon the recommendation
23 of the commissioner. Any interest earned on money in the State
24 Unemployment Insurance Trust Fund shall be credited to the Nebraska
25 Training and Support Trust Fund.

1 (2) Money in the Nebraska Training and Support Trust
2 Fund shall be used for (a) administrative costs of establishing,
3 assessing, collecting, and maintaining state unemployment insurance
4 tax liability and payments, (b) administrative costs of creating,
5 maintaining, and dissolving the State Unemployment Insurance Trust
6 Fund and the Nebraska Training and Support Trust Fund, (c) support
7 of public and private job training programs designed to train,
8 retrain, or upgrade work skills of existing Nebraska workers, (d)
9 recruitment of workers to Nebraska, (e) training new employees
10 of expanding Nebraska businesses, (f) the costs of creating a
11 common web portal for the attraction of businesses and workers to
12 Nebraska, and ~~(d)~~ (g) payment of unemployment insurance benefits if
13 solvency of the state's account in the Unemployment Trust Fund and
14 of the State Unemployment Insurance Trust Fund so require.

15 (3) There is hereby created within the Nebraska Training
16 and Support Trust Fund a separate account to be known as the
17 Administrative Costs Reserve Account. Money shall be allocated from
18 the Nebraska Training and Support Trust Fund to the Administrative
19 Costs Reserve Account in amounts sufficient to pay the anticipated
20 administrative costs identified in subdivisions (2)(a) and ~~(b)~~
21 through (g) of this section. The administrative costs determined to
22 be applicable to creation and operation of the State Unemployment
23 Insurance Trust Fund and the Nebraska Training and Support Trust
24 Fund shall be paid out of the Administrative Costs Reserve Account.

25 Sec. 4. Section 48-622.03, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 48-622.03 (1) There is hereby created as of January
3 1, 1996, the Nebraska Worker Training Board consisting of seven
4 members appointed and serving for terms determined by the Governor
5 as follows:

6 (a) ~~A member of the state advisory council created in~~
7 ~~section 48-610 who is~~ a representative of employers in Nebraska;

8 (b) ~~A member of the council who is~~ a representative of
9 employees in Nebraska;

10 (c) ~~A member of the council who is~~ a representative of
11 the public;

12 (d) The Commissioner of Labor or a designee;

13 (e) The Director of Economic Development or a designee;

14 (f) The Commissioner of Education or a designee; and

15 (g) The chairperson of the governing board of the
16 Nebraska Community College Association or a designee.

17 (2) Beginning July 1, 1996, and annually thereafter,
18 the Governor shall appoint a chairperson for the board. The
19 chairperson shall be either the representative of the employers,
20 the representative of the employees, or the representative of the
21 public.

22 (3) Beginning July 1, 1996, and annually thereafter
23 the board shall prepare an annual program plan for the upcoming
24 fiscal year containing guidelines for the program financed by the
25 Nebraska Training and Support Trust Fund. The guidelines shall

1 include, but not be limited to, guidelines for certifying training
2 providers, criteria for evaluating requests for the use of money
3 under section 48-622.02, and guidelines for requiring employers
4 to provide matching funds. The guidelines shall give priority
5 to training that contributes to the expansion of the Nebraska
6 workforce and increasing the pool of highly skilled workers in
7 Nebraska.

8 (4) Beginning September 1, 1997, and annually thereafter,
9 the board shall provide a report to the Governor covering the
10 activities of the program financed by the Nebraska Training and
11 Support Trust Fund for the previous fiscal year. The report shall
12 contain an assessment of the effectiveness of the program and its
13 administration.

14 Sec. 5. Section 48-648, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

16 48-648 (1) Combined tax shall accrue and become payable
17 by each employer not otherwise entitled to make payments in lieu
18 of contributions for each calendar year in which he or she is
19 subject to the Employment Security Law, with respect to wages for
20 employment. Such combined tax shall become due and be paid by each
21 employer to the commissioner for the State Unemployment Insurance
22 Trust Fund and the Unemployment Trust Fund in such manner and
23 at such times as the commissioner may, by rule and regulation,
24 prescribe and shall not be deducted, in whole or in part, from
25 the wages of individuals in such employer's employ. ~~The~~ For all

1 tax years beginning before January 1, 2010, the commissioner may
2 require that any employer whose annual payroll for either of the
3 two preceding calendar years has equaled or exceeded five hundred
4 thousand dollars to file combined tax returns and pay combined
5 taxes owed by an electronic method approved by the commissioner,
6 except when the employer establishes to the satisfaction of the
7 commissioner that filing the combined tax return or payment of
8 the tax by an electronic method would work a hardship on the
9 employer. For all tax years beginning on or after January 1, 2010,
10 the commissioner may require any employer whose annual payroll
11 for either of the two preceding calendar years has equaled or
12 exceeded one hundred thousand dollars to file combined tax returns
13 and pay combined taxes owed by an electronic method approved by
14 the commissioner, except when the employer establishes to the
15 satisfaction of the commissioner that filing the combined tax
16 return or payment of the tax by an electronic method would work a
17 hardship on the employer. In the payment of any combined tax, a
18 fractional part of a cent shall be disregarded unless it amounts to
19 one-half cent or more, in which case it shall be increased to one
20 cent. If the combined tax due for any reporting period is less than
21 five dollars, the employer need not remit the combined tax.

22 (2) If two or more related corporations or limited
23 liability companies concurrently employ the same individual and
24 compensate such individual through a common paymaster which is
25 one of such corporations or limited liability companies, each such

1 corporation or limited liability company shall be considered to
2 have paid as remuneration to such individual only the amounts
3 actually disbursed by it to such individual and shall not
4 be considered to have paid as remuneration to such individual
5 amounts actually disbursed to such individual by another of such
6 corporations or limited liability companies. An employee of a
7 wholly owned subsidiary shall be considered to be concurrently
8 employed by the parent corporation, company, or other entity
9 and the wholly owned subsidiary whether or not both companies
10 separately provide remuneration.

11 (3) The professional employer organization shall report
12 and pay combined tax, penalties, and interest owed upon wages
13 earned by worksite employees under the client's employer account
14 number using the client's combined tax rate. The client is liable
15 for the payment of unpaid combined tax, penalties, and interest
16 owed upon wages paid to worksite employees, and the worksite
17 employees shall be considered employees of the client for purposes
18 of the Employment Security Law.

19 Sec. 6. Section 48-648.01, Revised Statutes Cumulative
20 Supplement, 2008, is amended to read:

21 48-648.01 The Commissioner of Labor may require by rule
22 and regulation that each employer subject to the Employment
23 Security Law shall submit to the commissioner quarterly wage
24 reports on such forms and in such manner as the commissioner
25 may prescribe. ~~The~~ For all tax years beginning before January 1,

1 2010, the commissioner may require that any employer whose annual
2 payroll for either of the two preceding calendar years has equaled
3 or exceeded five hundred thousand dollars to file wage reports
4 by an electronic method approved by the commissioner, except when
5 the employer establishes to the satisfaction of the commissioner
6 that filing by an electronic method would work a hardship on the
7 employer. For all tax years beginning on or after January 1, 2010,
8 the commissioner may require any employer whose annual payroll for
9 either of the two preceding calendar years has equaled or exceeded
10 one hundred thousand dollars to file wage reports by an electronic
11 method approved by the commissioner, except when the employer
12 establishes to the satisfaction of the commissioner that filing by
13 an electronic method would work a hardship on the employer. The
14 quarterly wage reports shall be used by the commissioner to make
15 monetary determinations of claims for benefits.

16 Sec. 7. Section 48-649, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 48-649 The commissioner shall, for each calendar year,
19 determine the combined tax rate applicable to each employer on
20 the basis of his or her actual experience in the payment of
21 contributions and with respect to benefits charged against his or
22 her separate experience account, in accordance with the following
23 requirements:

24 (1) The commissioner shall, by December 1 of each
25 calendar year, and based upon information available through the

1 department, determine the state unemployment insurance tax rate for
2 the following year. The state unemployment insurance tax rate shall
3 be zero percent if:

4 (a) The average balance in the State Unemployment
5 Insurance Trust Fund at the end of any three months in the
6 preceding calendar year is greater than one percent of state
7 taxable wages for the same preceding year; or

8 (b) The balance in the State Unemployment Insurance Trust
9 Fund equals or exceeds thirty percent of the average month end
10 balance of the state's account in the Unemployment Trust Fund for
11 the three lowest calendar months in the preceding year; or

12 ~~(c) The state advisory council determines that a zero~~
13 ~~percent state unemployment insurance tax rate is in the best~~
14 ~~interests of preserving the integrity of the state's account in the~~
15 ~~Unemployment Trust Fund;~~

16 (2) (a) If the state unemployment insurance tax rate is
17 not zero percent as determined in this section, the combined
18 tax rate shall be divided so that not less than eighty percent
19 of the combined tax rate equals the contribution rate and not
20 more than twenty percent of the combined tax rate equals the
21 state unemployment insurance tax rate except for employers who are
22 assigned a combined tax rate of five and four-tenths percent or
23 more. For those employers, the state unemployment insurance tax
24 rate shall equal zero and their combined tax rate shall equal their
25 contribution rate.

1 (b) When the state unemployment insurance tax rate is
2 determined to be zero percent pursuant to subdivision (1) of this
3 section, the contribution rate for all employers shall equal one
4 hundred percent of the combined tax rate;

5 (3) In calendar year 2005, an employer's combined tax
6 rate shall be three and five-tenths percent of his or her annual
7 payroll unless and until (a) benefits have been payable from
8 and chargeable to his or her experience account throughout the
9 preceding one calendar year and (b) contributions have been payable
10 to the fund and credited to his or her experience account with
11 respect to the two preceding calendar years. Subject to fair and
12 reasonable rules and regulations of the commissioner issued with
13 due regard for the solvency of the fund, in calendar year 2005
14 the combined tax rate required of each employer who meets the
15 requirements of subdivisions (a) and (b) of this subdivision shall
16 be based directly on his or her contributions to and benefit
17 experience of his or her experience account and shall be determined
18 by the commissioner for each calendar year at its beginning. Such
19 rate shall not be greater than three and five-tenths percent of his
20 or her annual payroll if his or her experience account exhibits a
21 positive balance as of the beginning of such calendar year, but for
22 any employer who has been subject to the payment of contributions
23 for any two preceding calendar years, regardless of whether such
24 years are consecutive, and whose experience account exhibits a
25 negative balance as of the beginning of such calendar year, the

1 rate shall be greater than three and five-tenths percent of his
2 or her annual payroll but not greater than five and four-tenths
3 percent of his or her annual payroll until such time as the
4 experience account exhibits a positive balance, and thereafter the
5 rate shall not be greater than three and five-tenths percent of
6 his or her annual payroll. For calendar year 2005, the standard
7 rate shall be five and four-tenths percent of the employer's annual
8 payroll. As used in this subdivision, standard rate shall mean the
9 rate from which all reduced rates are calculated;

10 (4) (a) Effective January 1, 2006, an employer's combined
11 tax rate (i) for employers other than employers engaged in the
12 construction industry shall be the lesser of the state's average
13 combined tax rate as determined pursuant to subdivisions (4) (e),
14 (4) (f), and (4) (g) of this section or two and five-tenths percent
15 and (ii) for employers in the construction industry shall be the
16 category twenty rate determined pursuant to subdivisions (4) (e) and
17 (4) (f) of this section, unless and until:

18 (A) Benefits have been payable from and chargeable to his
19 or her experience account throughout the preceding four calendar
20 quarters; and

21 (B) ~~Contributions have been payable to the fund and~~
22 ~~credited to his or her experience account with respect to Wages~~
23 ~~for employment have been paid by the employer in each of the two~~
24 ~~preceding four-calendar-quarter periods.~~

25 For purposes of this subdivision (4) (a), employers

1 engaged in the construction industry means all employers
2 primarily engaged in business activities classified as sector 23
3 business activities under the North American ~~Industrial~~ Industry
4 Classification System.

5 (b) In no event shall the combined tax rate for employers
6 who fail to meet the requirements of subdivision (4)(a) of this
7 section be less than one and twenty-five hundredths percent.

8 (c) For any employer who has not been subject to the
9 ~~payment of contributions~~ paid wages for employment during each of
10 the two four-calendar-quarter periods ending on September 30 of
11 any year, but has been subject to the ~~payment of contributions~~
12 paid wages for employment in any two four-calendar-quarter periods,
13 regardless of whether such four-calendar-quarter periods are
14 consecutive, such employer's combined tax rate for the following
15 tax year shall be:

16 (i) The highest combined tax rate for employers with a
17 positive experience account balance if the employer's experience
18 account balance exhibits a positive balance as of September 30 of
19 the year of rate computation; or

20 (ii) The standard rate if the employer's experience
21 account exhibits a negative balance as of September 30 of the year
22 of rate computation.

23 (d) Beginning with rate calculations for calendar year
24 2006 and each year thereafter, the combined tax rate for employers
25 who meet the requirements of subdivision (4)(a) of this section

1 shall be calculated according to subdivisions (4)(e), (4)(f), and
 2 (4)(g) of this section and shall be based upon the employer's
 3 experience rating record and determined from the employer's reserve
 4 ratio, which is the percent obtained by dividing the amount by
 5 which, if any, the employer's contributions credited from the time
 6 the employer first or most recently became an employer, whichever
 7 date is later, and up to and including September 30 of the year
 8 the rate computation is made, plus any part of the employer's
 9 contributions due for that year paid on or before October 31
 10 of such year, exceed the employer's benefits charged during the
 11 same period, by the employer's average annual taxable payroll for
 12 the sixteen-consecutive-calendar-quarter period ending September
 13 30 of the year in which the rate computation is made. For an
 14 employer with less than sixteen consecutive calendar quarters of
 15 contribution experience, the employer's average taxable payroll
 16 shall be determined based upon the four-calendar-quarter periods
 17 for which contributions are payable.

18 (e) Each eligible experience rated employer shall be
 19 assigned to one of twenty rate categories with a corresponding
 20 experience factor as follows:

21	Category	Experience Factor
22	1	0.00
23	2	0.25
24	3	0.40
25	4	0.45

1	5	0.50
2	6	0.60
3	7	0.65
4	8	0.70
5	9	0.80
6	10	0.90
7	11	0.95
8	12	1.00
9	13	1.05
10	14	1.10
11	15	1.20
12	16	1.35
13	17	1.55
14	18	1.80
15	19	2.15
16	20	2.60

17 Eligible experience rated employers shall be assigned
18 to rate categories from highest to lowest according to their
19 experience reserve ratio with category one being assigned to
20 accounts with the highest reserve ratios and category twenty being
21 assigned to accounts with the lowest reserve ratios. Each category
22 shall be limited to no more than five percent of the state's total
23 taxable payroll, except that:

24 (i) Any employer which has a portion of its taxable wages
25 fall into one category and a portion into the next higher category

1 shall be assigned to the lower category; ~~and~~

2 (ii) No employer with a reserve ratio calculated to five
3 decimal places equal to another employer similarly calculated shall
4 be assigned to a higher rate than the employer to which it has the
5 equal reserve ratio; ~~and-~~

6 (iii) No employer with a positive experience account
7 balance shall be assigned to category twenty.

8 (f) The state's reserve ratio shall be calculated by
9 dividing the amount available to pay benefits in the Unemployment
10 Trust Fund and the State Unemployment Insurance Trust Fund as of
11 September 30, 2005, and each September 30 thereafter, less any
12 outstanding obligations and amounts appropriated therefrom by the
13 state's total wages from the four calendar quarters ending on
14 such September 30. For purposes of this section, total wages means
15 all remuneration paid by an employer in employment. The state's
16 reserve ratio shall be applied to the table in this subdivision to
17 determine the yield factor for the upcoming rate year.

18 State's Reserve Ratio	Yield	Factor
19 1.45 percent and above	=	0.70
20 1.30 percent up to but not including 1.45	=	0.75
21 1.15 percent up to but not including 1.30	=	0.80
22 1.00 percent up to but not including 1.15	=	0.90
23 0.85 percent up to but not including 1.00	=	1.00
24 0.70 percent up to but not including 0.85	=	1.10
25 0.60 percent up to but not including 0.70	=	1.20

LB 631

LB 631

1	0.50 percent up to but not including 0.60	=	1.25
2	0.45 percent up to but not including 0.50	=	1.30
3	0.40 percent up to but not including 0.45	=	1.35
4	0.35 percent up to but not including 0.40	=	1.40
5	0.30 percent up to but not including 0.35	=	1.45
6	Below 0.30 percent	=	1.50

7 Once the yield factor for the upcoming rate year has
8 been determined, it is multiplied by the amount of unemployment
9 benefits paid from combined tax during the four calendar quarters
10 ending September 30 of the preceding year. The resulting figure is
11 the planned yield for the rate year. The planned yield is divided
12 by the total taxable wages for the four calendar quarters ending
13 September 30 of the previous year and carried to four decimal
14 places to create the average combined tax rate for the rate year.

15 (g) The average combined tax rate is assigned to rate
16 category twelve as established in subdivision (4)(e) of this
17 section. Rates for each of the remaining nineteen categories are
18 determined by multiplying the average combined tax rate by the
19 experience factor associated with each category and carried to
20 four decimal places. Employers who are delinquent in filing their
21 combined tax reports as of October 31 of any year shall be assigned
22 to category twenty for the following calendar year unless the
23 delinquency is corrected prior to December 31 of the year of rate
24 calculation.

25 (h) As used in this subdivision (4) of this section,

1 standard rate means the rate assigned to category twenty for
2 that year. For calendar years 2006 and thereafter, the standard
3 rate shall be not less than five and four-tenths percent of the
4 employer's annual taxable payroll;

5 (5) Any employer may at any time make voluntary
6 contributions up to the amount necessary to qualify for one rate
7 category reduction, additional to the required contributions,
8 to the fund to be credited to his or her account. Voluntary
9 contributions received after March 10, 2005, for rate year 2005 or
10 January 10 for rate year 2006 and thereafter shall not be used in
11 rate calculations for the same calendar year;

12 (6) As used in sections 48-648 to 48-654, the term
13 payroll means the total amount of wages during a calendar year,
14 except as otherwise provided in section 48-654, by which the
15 combined tax was measured; and

16 (7)(a) The state or any of its instrumentalities shall
17 make payments in lieu of contributions in an amount equal to
18 the full amount of regular benefits plus one-half of the amount
19 of extended benefits paid during each calendar quarter that is
20 attributable to service in employment of the state or any of its
21 instrumentalities. The commissioner after the end of each calendar
22 quarter shall notify any state instrumentality or other public
23 employer of the amount of regular benefits and one-half the amount
24 of extended benefits paid that are attributable to service in its
25 employment and the instrumentality or public employer so notified

1 shall reimburse the fund within thirty days after receipt of such
2 notice. ~~The~~ For all tax years beginning before January 1, 2010,
3 the commissioner may require that any employer whose annual payroll
4 for either of the two preceding calendar years has equaled or
5 exceeded five hundred thousand dollars to pay the reimbursement
6 by an electronic method approved by the commissioner, except when
7 the employer establishes to the satisfaction of the commissioner
8 that payment of the reimbursement by an electronic method would
9 work a hardship on the employer. For all tax years beginning on or
10 after January 1, 2010, the commissioner may require any employer
11 whose annual payroll for either of the two preceding calendar years
12 has equaled or exceeded one hundred thousand dollars to pay the
13 reimbursement by an electronic method approved by the commissioner,
14 except when the employer establishes to the satisfaction of the
15 commissioner that payment of the reimbursement by an electronic
16 method would work a hardship on the employer.

17 (b) After December 31, 1977, the state or any of its
18 political subdivisions and any instrumentality of one or more of
19 the foregoing or any other governmental entity for which services
20 in employment as is provided by subdivision (4)(a) of section
21 48-604 are performed shall be required to pay contributions and
22 after December 31, 1996, combined tax on wages paid for services
23 rendered in its or their employment on the same basis as any
24 other employer who is liable for the payment of combined tax under
25 the Employment Security Law, unless the state or any political

1 subdivision thereof and any instrumentality of one or more of the
2 foregoing or any other governmental entity for which such services
3 are performed files with the commissioner its written election not
4 later than January 31, 1978, or if such employer becomes subject
5 to this section after January 1, 1978, not later than thirty
6 days after such subjectivity begins, to become liable to make
7 payments in lieu of contributions in an amount equal to the full
8 amount of regular benefits plus one-half of the amount of extended
9 benefits paid during each calendar quarter that is attributable to
10 service in employment of such electing employer prior to December
11 31, 1978, and in an amount equal to the full amount of regular
12 benefits plus the full amount of extended benefits paid during each
13 calendar quarter that is attributable to service in employment of
14 such electing employer after January 1, 1979. Eligible employers
15 electing to make payments in lieu of contributions shall not
16 be liable for state unemployment insurance tax payments. The
17 commissioner, after the end of each calendar quarter, shall notify
18 any such employer that has so elected of the amount of benefits for
19 which it is liable to pay pursuant to its election that have been
20 paid that are attributable to service in its employment and the
21 employer so notified shall reimburse the fund within thirty days
22 after receipt of such notice.

23 (c) Any employer which makes an election in accordance
24 with subdivision (b) of this subdivision to become liable for
25 payments in lieu of contributions shall continue to be liable for

1 payments in lieu of contributions for all benefits paid based upon
2 wages paid for service in employment of such employer while such
3 election is effective and such election shall continue until such
4 employer files with the commissioner, not later than December 1
5 of any calendar year, a written notice terminating its election
6 as of December 31 of that year and thereafter such employer shall
7 again be liable for the payment of contributions and for the
8 reimbursement of such benefits as may be paid based upon wages paid
9 for services in employment of such employer while such election was
10 effective.

11 Sec. 8. Section 48-652, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 48-652 (1)(a) A separate experience account shall be
14 established for each employer who is liable for payment of
15 contributions. Whenever and wherever in the Employment Security
16 Law the terms reserve account or experience account are used,
17 unless the context clearly indicates otherwise, such terms shall be
18 deemed interchangeable and synonymous and reference to either of
19 such accounts shall refer to and also include the other.

20 (b) A separate reimbursement account shall be established
21 for each employer who is liable for payments in lieu of
22 contributions. All benefits paid with respect to service in
23 employment for such employer shall be charged to his or her
24 reimbursement account and such employer shall be billed for and
25 shall be liable for the payment of the amount charged when billed

1 by the commissioner. Payments in lieu of contributions received
2 by the commissioner on behalf of each such employer shall be
3 credited to such employer's reimbursement account, and two or more
4 employers who are liable for payments in lieu of contributions may
5 jointly apply to the commissioner for establishment of a group
6 account for the purpose of sharing the cost of benefits paid that
7 are attributable to service in the employ of such employers. The
8 commissioner shall prescribe such rules and regulations as he or
9 she deems necessary with respect to applications for establishment,
10 maintenance, and termination of group accounts authorized by this
11 subdivision.

12 (2) All contributions paid by an employer shall be
13 credited to the experience account of such employer. State
14 unemployment insurance tax payments shall not be credited to
15 the experience account of each employer. Partial payments of
16 combined tax shall be credited so that at least eighty percent
17 of the combined tax payment excluding interest and penalty is
18 credited first to contributions due. In addition to contributions
19 credited to the experience account, each employer's account shall
20 be credited as of June 30 of each calendar year with interest
21 at a rate determined by the commissioner based on the average
22 annual interest rate paid by the Secretary of the Treasury of
23 the United States of America upon the state's account in the
24 Unemployment Trust Fund for the preceding calendar year multiplied
25 by the balance in his or her experience account at the beginning

1 of such calendar year. If the total credits as of such date to
2 all employers' experience accounts are equal to or greater than
3 ninety percent of the total amount in the Unemployment Compensation
4 Fund, no interest shall be credited for that year to any employer's
5 account. Contributions with respect to prior years which are
6 received on or before January 31 of any year shall be considered
7 as having been paid at the beginning of the calendar year. All
8 voluntary contributions which are received on or before January
9 10 of any year shall be considered as having been paid at the
10 beginning of the calendar year.

11 (3)(a) Each experience account shall be charged only
12 for benefits based upon wages paid by such employer. No benefits
13 shall be charged to the experience account of any employer if (i)
14 such benefits were paid on the basis of a period of employment
15 from which the claimant (A) left work voluntarily without good
16 cause, (B) left work voluntarily due to a nonwork-connected illness
17 or injury, (C) left work voluntarily with good cause to escape
18 abuse as defined in section 42-903 between household members as
19 provided in subdivision (1) of section 48-628.01, (D) left work
20 from which he or she was discharged for misconduct connected with
21 his or her work, or (E) left work voluntarily and is entitled to
22 unemployment benefits without disqualification in accordance with
23 subdivision (3) or (5) of section 48-628.01 and (ii) the employer
24 has filed timely notice of the facts on which such exemption is
25 claimed in accordance with rules and regulations prescribed by

1 the commissioner. No benefits shall be charged to the experience
2 account of any employer if such benefits were paid on the basis
3 of wages paid in the base period that are wages for insured
4 work solely by reason of subdivision (5) (b) of section 48-627. No
5 benefits shall be charged to the experience account of any employer
6 if such benefits were paid during a week when the individual was
7 participating in training approved under section 236(a) (1) of the
8 federal Trade Act of 1974, 19 U.S.C. 2296(a) (1).

9 (b) Each reimbursement account shall be charged only for
10 benefits paid that were based upon wages paid by such employer in
11 the base period that were wages for insured work solely by reason
12 of subdivision (5) of section 48-627.

13 (c) Benefits paid to an eligible individual shall be
14 charged against the account of his or her most recent employers
15 within his or her base period against whose accounts the maximum
16 charges hereunder have not previously been made in the inverse
17 chronological order in which the employment of such individual
18 occurred. The maximum amount so charged against the account of any
19 employer, other than an employer for which services in employment
20 as provided in subdivision (4) (a) of section 48-604 are performed,
21 shall not exceed the total benefit amount to which such individual
22 was entitled as set out in section 48-626 with respect to base
23 period wages of such individual paid by such employer plus one-half
24 the amount of extended benefits paid to such eligible individual
25 with respect to base period wages of such individual paid by

1 such employer. The commissioner shall by rules and regulations
2 prescribe the manner in which benefits shall be charged against
3 the account of several employers for whom an individual performed
4 employment during the same quarter or during the same base period.
5 Any benefit check duly issued and delivered or mailed to a claimant
6 and not presented for payment within one year from the date of its
7 issue may be invalidated and the amount thereof credited to the
8 Unemployment Compensation Fund, except that a substitute check may
9 be issued and charged to the fund on proper showing at any time
10 within the year next following. Any charge made to an employer's
11 account for any such invalidated check shall stand as originally
12 made.

13 (4) (a) An employer's experience account shall be deemed
14 to be terminated one calendar year after such employer has ceased
15 to be subject to the Employment Security Law, except that if the
16 commissioner finds that an employer's business is closed solely
17 because of the entrance of one or more of the owners, officers,
18 partners, or limited liability company members or the majority
19 stockholder into the armed forces of the United States, or of any
20 of its allies, after July 1, 1950, such employer's account shall
21 not be terminated and, if the business is resumed within two years
22 after the discharge or release from active duty in the armed forces
23 of such person or persons, the employer's experience account shall
24 be deemed to have been continuous throughout such period.

25 (b) An experience account terminated pursuant to this

1 subsection shall be reinstated if (i) the employer becomes subject
2 again to the Employment Security Law within one calendar year after
3 termination of such experience account and the employer makes a
4 written application for reinstatement of such experience account
5 to the commissioner within two calendar years after termination of
6 such experience account and (ii) the commissioner finds that the
7 employer is operating substantially the same business as prior to
8 the termination of such experience account.

9 (5) All money in the Unemployment Compensation Fund shall
10 be kept mingled and undivided. The payment of benefits to an
11 individual shall in no case be denied or withheld because the
12 experience account of any employer does not have a total of
13 contributions paid in excess of benefits charged to such experience
14 account.

15 (6) A contributory or reimbursable employer shall be
16 relieved of charges if the employer was previously charged for
17 wages and the same wages are being used a second time to establish
18 a new claim as a result of the October 1, 1988, change in the base
19 period.

20 (7) If an individual's base period wage credits
21 represent part-time employment for a contributory employer and
22 the contributory employer continues to employ the individual to
23 the same extent as during the base period, then the contributory
24 employer's experience account shall not be charged if the
25 contributory employer has filed timely notice of the facts on which

1 such exemption is claimed in accordance with rules and regulations
2 prescribed by the commissioner.

3 Sec. 9. Section 48-654, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 48-654 Subject to section 48-654.01, any employer that
6 acquires the organization, trade, or business, or substantially all
7 the assets thereof, of another employer shall immediately notify
8 the commissioner thereof, and prior to September 6, 1985, shall,
9 and on and after September 6, 1985, may, pursuant to rules and
10 regulations prescribed by the commissioner, assume the position of
11 such employer with respect to the resources and liabilities of
12 such employer's experience account as if no change with respect to
13 such employer's experience account has occurred. The commissioner
14 may provide by rule and regulation for partial transfers of
15 experience accounts, except that such partial transfers of accounts
16 shall be construed to allow computation and fixing of contribution
17 rates only on and after January 1, 1953, where an employer has
18 transferred at any time subsequent to or on January 1, 1950,
19 a definable and segregable portion of his or her payroll and
20 business to a transferee-employer. For an acquisition which occurs
21 during ~~any of the first three~~ either of the first two calendar
22 quarters of a calendar year or during the fourth quarter of the
23 preceding calendar year, a new rate of contributions, payable
24 by the transferee-employer with respect to wages paid by him or
25 her after midnight of the last day of the calendar quarter in

1 which such acquisition occurs and prior to midnight of the ~~last~~
2 ~~day of the calendar year in which acquisition occurs,~~ following
3 September 30, shall be computed in accordance with this section.
4 For the purpose of computing such new rate of contributions,
5 the computation date with respect to any such acquisition shall
6 be ~~December 31~~ September 30 of the preceding calendar year and
7 the term payroll shall mean the total amount of wages by which
8 contributions to the transferee's account and to the transferor's
9 account were measured for ~~the calendar year~~ four calendar quarters
10 ending September 30 preceding the computation date.

11 Sec. 10. Section 48-655, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-655 (1) Combined taxes or payments in lieu of
14 contributions unpaid on the date on which they are due and
15 payable, as prescribed by the commissioner, shall bear interest at
16 the rate of one and one-half percent per month from such date until
17 payment, plus accrued interest, is received by the commissioner,
18 except that no interest shall be charged subsequent to the date
19 of the erroneous payment of an amount equal to the amount of the
20 delayed payment into the unemployment trust fund of another state
21 or to the federal government. Interest collected pursuant to this
22 section shall be paid in accordance with subdivision (1)(b) of
23 section 48-621. If, after due notice, any employer defaults in any
24 payment of combined taxes or payments in lieu of contributions or
25 interest thereon, the amount due may be collected ~~(1)~~ (a) by civil

1 action in the name of the commissioner and the employer adjudged
2 in default shall pay the costs of such action or ~~(2)~~ (b) by setoff
3 against any state income tax refund due the employer pursuant to
4 sections 77-27,197 to 77-27,209. Civil actions brought under this
5 section to collect combined taxes or interest thereon or payments
6 in lieu of contributions or interest thereon from an employer shall
7 be heard by the court at the earliest possible date and shall
8 be entitled to preference upon the calendar of the court over
9 all other civil actions except petitions for judicial review under
10 section 48-638.

11 (2) The commissioner may by rule and regulation provide
12 for the offset from a person's personal federal income tax refund
13 of contributions, penalties, and interest due and payable for
14 which the commissioner has determined the person to be liable
15 due to fraud and which remain uncollected for not more than
16 ten years. Such rules and regulations shall comply with Public
17 Law 110-328 (2008) and United States Treasury regulations and
18 guidelines adopted pursuant thereto. The commissioner shall notify
19 the debtor, by certified mail return receipt requested, that the
20 commissioner plans to recover the debt through offset against any
21 federal income tax refund, and the debtor shall be given sixty days
22 to present evidence that all or part of the liability is either
23 not legally enforceable or not due to fraud. The commissioner
24 shall review any evidence presented and determine that the debt
25 is legally enforceable and due to fraud before proceeding further

1 with the offset. The amount recovered, less any administrative fees
2 charged by the United States Treasury, shall be credited to the
3 debt owed. Any determination rendered under this subsection that
4 the person's federal income tax refund is not subject to offset
5 does not require the commissioner to amend the commissioner's
6 initial determination that formed the basis for the proposed
7 offset.

8 Sec. 11. Section 48-665, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 48-665 (1) Any person who has received any sum as
11 benefits under the Employment Security Law to which he or she
12 was not entitled shall be liable to repay such sum to the
13 commissioner for the fund. Any such erroneous benefit payments
14 shall be collectible ~~(1)~~ (a) without interest by civil action in
15 the name of the commissioner, ~~(2)~~ (b) by offset against any future
16 benefits payable to the claimant with respect to the benefit year
17 current at the time of such receipt or any benefit year which may
18 commence within three years after the end of such current benefit
19 year, except that no such recoupment by the withholding of future
20 benefits shall be had if such sum was received by such person
21 without fault on his or her part and such recoupment would defeat
22 the purpose of the Employment Security Law or would be against
23 equity and good conscience, or ~~(3)~~ (c) by setoff against any state
24 income tax refund due the claimant pursuant to sections 77-27,197
25 to 77-27,209.

1 (2) The commissioner may by rule and regulation provide
2 for the offset from a person's personal federal income tax refund
3 of any person who has received any sum as benefits under the
4 Employment Security Law to which he or she was not entitled as
5 a result of fraud and which remain uncollected for not more than
6 ten years. Such rules and regulations shall comply with Public
7 Law 110-328 (2008) and United States Treasury regulations and
8 guidelines adopted pursuant thereto. The commissioner shall notify
9 the debtor that the commissioner plans to recover the debt through
10 offset against any federal income tax refund, and the debtor shall
11 be given sixty days to present evidence that all or part of the
12 liability is either not legally enforceable or not due to fraud.
13 The commissioner shall review any evidence presented and determine
14 that the debt is legally enforceable and due to fraud before
15 proceeding further with the offset. The amount recovered, less any
16 administrative fees charged by the United States Treasury, shall
17 be credited to the debt owed. Any determination rendered under
18 this subsection that the person's federal income tax refund is not
19 subject to offset does not require the commissioner to amend the
20 commissioner's initial determination that formed the basis for the
21 proposed offset.

22 Sec. 12. Section 48-668, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 48-668 (1) The commissioner is hereby authorized to enter
25 into arrangements with the appropriate and duly authorized agencies

1 of other states or the federal government, or both, whereby:

2 ~~(1)~~ (a) Services performed by an individual for a single
3 employer for which services are customarily performed by such
4 individual in more than one state shall be deemed to be services
5 performed entirely within any one of the states in which ~~(a)~~ (i)
6 any part of such individual's service is performed, ~~(b)~~ (ii) such
7 individual has his or her residence, or ~~(c)~~ (iii) the employer
8 maintains a place of business, if there is in effect, as to such
9 services, an election by an employer with the acquiescence of such
10 individual, approved by the agency charged with the administration
11 of such state's unemployment compensation law, pursuant to which
12 services performed by such individual for such employer are deemed
13 to be performed entirely within such state;

14 ~~(2)~~ (b) Service performed by not more than three
15 individuals, on any portion of a day but not necessarily
16 simultaneously, for a single employer which customarily operates
17 in more than one state shall be deemed to be service performed
18 entirely within the state in which such employer maintains the
19 headquarters of his or her business if there is in effect, as
20 to such service, an approved election by an employer with the
21 affirmative consent of each such individual, pursuant to which
22 service performed by such individual for such employer is deemed to
23 be performed entirely within such state;

24 ~~(3)~~ (c) Potential rights to benefits under the Employment
25 Security Law may constitute the basis for payment of benefits

1 by another state or the federal government and potential rights
2 to benefits accumulated under the law of another state or the
3 federal government may constitute the basis for the payment of
4 benefits by this state. Such benefits shall be paid under the
5 Employment Security Law or under the law of such state or the
6 federal government or under such combination of the provisions of
7 both laws, as may be agreed upon as being fair and reasonable
8 to all affected interests. No such arrangement shall be entered
9 into unless it contains provisions for reimbursement to the fund
10 for such benefits as are paid on the basis of wages and service
11 subject to the law of another state or the federal government,
12 and provision for reimbursement from the fund for such benefits
13 as are paid by another state or the federal government on the
14 basis of wages and service subject to the Employment Security Law.
15 Reimbursements paid from the fund pursuant to this section shall be
16 deemed to be benefits for the purposes of the Employment Security
17 Law; and

18 ~~(4)~~ (d) Wages, upon the basis of which an individual may
19 become entitled to benefits under an employment security law of
20 another state or of the federal government, shall be deemed to be
21 wages for insured work for the purpose of determining his or her
22 benefits under the Employment Security Law; and wages for insured
23 work, on the basis of which an individual may become entitled to
24 benefits under the Employment Security Law, shall be deemed to be
25 wages on the basis of which unemployment insurance is payable under

1 such law of another state or of the federal government. No such
2 arrangement shall be entered into unless it contains provisions
3 for reimbursement to the fund for such of the benefits paid under
4 the Employment Security Law upon the basis of such wages and
5 provision for reimbursement from the fund for such benefits paid
6 under such other law upon the basis of wages for insured work,
7 as the commissioner finds will be fair and reasonable to all
8 affected interests. Reimbursement paid from the fund pursuant to
9 this section shall be deemed to be benefits for the purposes of the
10 Employment Security Law.

11 (2) Notwithstanding any other provisions of this section,
12 the commissioner shall participate in any arrangements for the
13 payment of benefits on the basis of combining an individual's
14 wages and employment covered under the Employment Security Law with
15 his or her wages and employment covered under the unemployment
16 compensation laws of other states which are approved by the
17 United States Secretary of Labor in consultation with the state
18 unemployment compensation agencies as reasonably calculated to
19 assure the prompt and full payment of benefits in such situations
20 and which include provisions for (a) applying the base period
21 of a single state law to a claim involving the combining of an
22 individual's wages and employment covered under two or more state
23 unemployment compensation laws, and (b) avoiding the duplicate use
24 of wages and employment by reason of such combining. However, no
25 benefits paid pursuant to an agreement to combine wages entered

1 into under this subsection shall be charged against any employer's
2 experience account if the employer's experience account, under the
3 same or similar circumstances, would not be charged under the
4 Employment Security Law. Benefits received by a claimant pursuant
5 to an agreement entered into under this subsection to which he or
6 she is not entitled shall be credited to an employer's experience
7 account or reimbursement account in the same manner as claims paid
8 based solely upon the laws of this state.

9 Sec. 13. Section 48-668.02, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 48-668.02 Reimbursements paid from the fund pursuant to
12 ~~subsections (3) and (4)~~ subdivisions (1)(c) and (1)(d) of section
13 48-668 shall be deemed to be benefits for the purposes of the
14 Employment Security Law. The commissioner is authorized to make to
15 other state or federal agencies and to receive from such other
16 state or federal agencies reimbursements from or to the fund
17 in accordance with arrangements entered into pursuant to section
18 48-668.

19 Sec. 14. Original sections 48-622.01, 48-622.02,
20 48-622.03, 48-655, 48-665, 48-668, and 48-668.02, Reissue Revised
21 Statutes of Nebraska, and sections 48-612.01, 48-648, 48-648.01,
22 48-649, 48-652, and 48-654, Revised Statutes Cumulative Supplement,
23 2008, are repealed.

24 Sec. 15. The following section is outright repealed:
25 Section 48-610, Reissue Revised Statutes of Nebraska.

LB 631

LB 631

1 Sec. 16. Since an emergency exists, this act takes effect
2 when passed and approved according to law.